

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RONDEL DELBERT GARDNER,

Plaintiff,

v.

GAVIN NEWSOM, et al.,

Defendants.

No. 2:19-cv-0272 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
14 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
24 sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific
25 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what
26 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93
27 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).
28 In reviewing a complaint under this standard, the court must accept as true the allegations of the

1 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most
2 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
3 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Named as defendants are Gavin Newsom, M. Voong, J. Lynch, Lieutenant Ellen,
5 Counselor Coach and unidentified laundry staff. Plaintiff's allegations are difficult to understand.

6 Plaintiff appears to allege that he was charged with a rules violation for stealing soap at
7 his job. Plaintiff alleges that he would not have had to steal state soap if he had been given a pay
8 number. Plaintiff alleges that he was denied due process during his disciplinary hearing. Plaintiff
9 appears to claim that his grievances challenging the guilty finding were not properly processed.
10 Plaintiff alleges that he is suing for ten million dollars because his attempts to file administrative
11 appeals were thwarted and he was denied due process.

12 Plaintiff does not allege how he was denied due process during his prison disciplinary
13 hearing. For this reason, plaintiff's due process claim is dismissed with leave to amend. In an
14 amended complaint, plaintiff must clearly describe the alleged due process violations.

15 In addition, “[f]ederal law opens two main avenues to relief on complaints related to
16 imprisonment: a petition for writ of habeas corpus, 28 U.S.C. § 2254, and a complaint under ... 42
17 U.S.C. § 1983.” Muhammad v. Close, 540 U.S. 749, 750 (2004) (per curiam). “Challenges to the
18 validity of any confinement or to particulars affecting its duration are the province of habeas
19 corpus; requests for relief turning on circumstances of confinement may be presented in a § 1983
20 action.” Id. (internal citation omitted). A prisoner's claims are within the core of habeas corpus if
21 they challenge the fact or duration of his conviction or sentence. Nettles v. Grounds, 830 F.3d
22 922, 934 (9th Cir. 2016) (en banc), cert. denied, 137 S. Ct. 645 (2017).

23 In Heck v. Humphrey, the United States Supreme Court held that a section 1983 claim
24 cannot proceed when “a judgment in favor of the plaintiff would necessarily imply the invalidity
25 of his conviction or sentence.” Heck, 512 U.S. at 486-87. In Edwards v. Balisok, 520 U.S. 641,
26 648 (1997), the Supreme Court applied the Heck bar to a Section 1983 action involving allegedly
27 defective prison disciplinary procedures resulting in a loss of “good-time” credits. Accordingly,
28 “a state prisoner's [section] 1983 action is barred (absent prior invalidation) -- no matter the relief

1 sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct
2 leading to conviction or internal prison proceedings) -- if success in that action would necessarily
3 demonstrate the invalidity of confinement or its duration." Wilkinson v. Dotson, 544 U.S. 74, 81-
4 02 (2005).

5 However, a prisoner's Section 1983 action challenging disciplinary proceedings is not
6 barred by Heck if the challenge "threatens no consequence for [the] conviction or the duration of
7 [the] sentence." Muhammad v. Close, 540 U.S. 749, 751 (2004) (per curiam). Applying that
8 limitation, the Ninth Circuit concluded in Nettles v. Grounds, 830 F.3d at 934-36, that a
9 California prisoner facing a life term who challenged a disciplinary hearing that resulted in a loss
10 of good time credits would not necessarily be entitled to a speedier release if successful and, as a
11 result, could bring the claim under Section 1983.

12 In an amended complaint, plaintiff shall address whether he was assessed time credits as a
13 result of his disciplinary conviction. Plaintiff shall also address whether the assessment of time
14 credits has any impact on his release date.

15 Finally, plaintiff's claim that prison officials failed to properly process his administrative
16 appeals does not state a potentially colorable due process claim. See Ramirez v. Galaza, 334 F.3d
17 850, 860 (9th Cir. 2003) (prisoners do not have a "separate constitutional entitlement to a specific
18 prison grievance procedure.") (citation omitted); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.
19 1988) (due process not violated simply because defendant fails properly to process grievances
20 submitted for consideration).

21 For the reasons discussed above, plaintiff's complaint is dismissed with leave to amend.
22 If plaintiff files an amended complaint, he must link each named defendant to the alleged
23 deprivations. In other words, plaintiff must allege how each named defendant violated his
24 constitutional rights.

25 The Civil Rights Act under which this action was filed provides as follows:

26 Every person who, under color of [state law] . . . subjects, or causes
27 to be subjected, any citizen of the United States . . . to the deprivation
28 of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

1 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
2 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
3 Monell v. Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983
4 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no
5 affirmative link between the incidents of police misconduct and the adoption of any plan or policy
6 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
7 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative
8 act, participates in another’s affirmative acts or omits to perform an act which he is legally
9 required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588
10 F.2d 740, 743 (9th Cir. 1978).

11 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
12 their employees under a theory of respondeat superior and, therefore, when a named defendant
13 holds a supervisorial position, the causal link between him and the claimed constitutional
14 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
15 (no liability where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d
16 438, 441 (9th Cir. 1978) (no liability where there is no evidence of personal participation), cert.
17 denied, 442 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of
18 official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673
19 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal
20 participation is insufficient).

21 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
22 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. In addition,
23 plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff’s
24 amended complaint complete. Local Rule 220 requires that an amended complaint be complete
25 in itself without reference to any prior pleading. This requirement exists because, as a general
26 rule, an amended complaint supersedes the original complaint. See Ramirez v. County of San
27 Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint supersedes the
28 original, the latter being treated thereafter as non-existent.’” (internal citation omitted)). Once

1 plaintiff files an amended complaint, the original pleading no longer serves any function in the
2 case. Therefore, in an amended complaint, as in an original complaint, each claim and the
3 involvement of each defendant must be sufficiently alleged.

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
6 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
7 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
8 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
9 Director of the California Department of Corrections and Rehabilitation filed concurrently
10 herewith.

11 3. Plaintiff's complaint is dismissed.

12 4. Within thirty days from the date of this order, plaintiff shall complete the attached
13 Notice of Amendment and submit the following documents to the court:

- 14 a. The completed Notice of Amendment; and
15 b. An original and one copy of the Amended Complaint.

16 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
17 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
18 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

19 Failure to file an amended complaint in accordance with this order may result in the
20 dismissal of this action.

21 Dated: April 30, 2019

22 
23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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NOTICE OF AMENDMENT

DATED:

Amended Complaint

Plaintiff